

1 COUNSEL LISTED ON SIGNATURE BLOCK

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10) No.: M-07-5944 SC
11)
12) MDL NO. 1917
13)
14) **STIPULATION AND [PROPOSED]**
15) **ORDER REGARDING PROCEDURES**
16) **GOVERNING EXPERT DISCOVERY**
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The Plaintiffs and Defendants agree as follows regarding the timing and scope of any expert discovery in this case, relating to both class certification and the merits, and hereby agree and submit this stipulation and proposed order:

1. Within three business days of any party serving any expert reports and/or expert declarations in this litigation pursuant to Fed. R. Civ. P. 26(a)(2)(B), the party or parties proffering the expert witness shall produce: the data or other information relied upon by the expert witness in forming the expert witness's opinions; any exhibits that will be used to summarize or support the expert witness's opinions; the expert witness's qualifications, including a list of all publications authored in the previous 10 years; a list of all other cases in which, during the previous four years, the expert witness has testified as an expert at trial or by deposition; a statement of the compensation to be paid for the expert witness's study and testimony in the case. "Data or other information relied upon" shall be deemed to include, but will not be limited to, underlying data, spreadsheets, computerized regression analysis and/or other underlying reports and schedules sufficient to reconstruct the expert witness's work,

STIPULATION AND [PROPOSED] ORDER REGARDING NONPARTY DISCOVERY

1 calculations, and/or analyses. Information should be produced electronically (via email or disc)
2 where appropriate. Where documents have previously been produced as part of the discovery,
3 identification by Bates number is sufficient. As to other documents relied upon by the expert,
4 documents that are publicly available need not be produced absent specific request.

5 2. Notwithstanding the foregoing, the following types of information shall *not*
6 be the subject of any form of discovery:

7 (1) the content of communications among and between: (a) counsel and the
8 expert and/or the expert's staff and/or supporting firms; (b) counsel and any
9 non-testifying expert consultant and/or the consultant's staff; (c) the expert and
10 other experts and/or other non-testifying expert consultants; (d) experts and their
11 staff and/or supporting firms; (e) non-testifying expert consultants and their
12 staffs; (f) the respective staffs and/or supporting firms of experts or
13 non-testifying expert consultants and the staffs and/or supporting firms of other
14 experts or non-testifying expert consultants.

15 (2) notes, drafts, written communications or other records of preliminary work
16 created by, or for, experts or non-testifying expert consultants.

17 The foregoing exclusions from discovery will not apply to any information,
18 communications or documents upon which the expert relies as a basis for his or her opinion.

19 3. This Stipulation shall be effective only upon agreement of Plaintiffs and
20 Defendants.

21 **IT IS SO STIPULATED.**

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23 Dated: November 16, 2009

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28 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

29 DATED: November 17, 2009

